where the House of Lords held that where a partner was not liable for a debt of the firm (in that case, the partner was an infant), a receiving order could not be made against the firm simply but could be made against the firm 'other than' the infant partner. The Court of Appeal declined to apply *Lovell & Christmas* v *Beauchamp*[3] as in that case there was proper service on the firm whereas, in the case before the court, service of the notice not having been made at the principal place of business of the firm, r 279 of the Bankruptcy Rules 1915 (equivalent to BR 236) could not operate to deem service on S. The court held that the receiving order even in that form was wrong. In the present case, neither the bankruptcy notice nor the petition was served at the principal place of business of the dissolved firm (ie as constituted by OAS and OHC) as such firm could not have a place of business: see Lord Wright MR in *Re a Debtor (No 24 of 1935)*[6] at pp 300-301. For this reason, the receiving orders made against Solid Gold were, a fortiori, bad.

In *Re the Debtors*,[5] it was argued by the creditor that since a receiving order could have been made and ought to have been made against A only and if it had been so made it would have been regular and in order, the defect was formal and could be remedied and no injustice would have been done by making the receiving order against A and the court ought to amend the receiving order. The court rejected this argument. Lord Sterndale MR said:

> Some cases are strictly cases of formal defects, and others of irregularities. I doubt whether this is a formal defect within the meaning of s 147 of the Bankruptcy Act 1914, but I think that as it is a question of bankruptcy, which is a serious matter, we ought not to amend in this case.

Scrutton LJ said:

> As to the power of the court to amend, can it be said that what has happened in this case is a formal defect? What has happened is that an order has been drawn up against a firm except as to one partner, although there has been no good service on the firm. In *Lovell & Christmas* v *Beauchamp* [1894] AC 607, amendment was ordered because in that case there had been a good service on the firm. I do not think that that authority applies where there has been no good service on a firm. The order as drawn up would have a different effect to an order against an individual. It is a defect involving substantial consequences. I think that the amendment asked for goes beyond the powers conferred by s 147 of the Act.

In my view, the defects in these proceedings were much more serious than the defect in *Re the Debtors*.[5] There were also more defects. I do not think that any amendment can be made to the bankruptcy notice and the petition in order to validate the receiving order or the adjudication orders against OAS and/or OHC. The judgment debt was not one on which execution had not been stayed and no amendment to the notice or the petition can cure this defect.

For the reasons given above, the application of the Official Assignee is allowed. The receiving order and adjudication orders made on 13 November 1987 are rescinded and annulled. The creditors will pay the costs of the Official Assignee.

Order accordingly.

Solicitors: *WT Woon & Co.*

Reported by *Prof Ahmad Ibrahim*

The 'American Oklahoma'

Bank of America National Trust & Savings Association v 'American Oklahoma' (Owners of) (United States Trust Company of New York & Ors, Interveners)

HIGH COURT (SINGAPORE) – ADMIRALTY IN REM NO 46 OF 1987
LAI KEW CHAI J
30 AUGUST 1988

Shipping – Admiralty in rem – Plaintiffs made loans and advances to defendants – Loan secured by first preferred ship mortgage created while vessel was not in Singapore – Mortgage not registered in Singapore as a charge – Whether valid – Plaintiffs applied for declaration of validity of mortgage and sum claimed – Intervention by third interveners – Competing claims over vessel – Companies Act (Cap 50, 1985 Ed), ss 131 & 141

By this admiralty in rem writ, the plaintiffs claimed the sum of US$154,156,319 and US$16,474 being loans and advances made to or on account of the United States Lines Inc ('US Lines'), the owners of the 4258 TEU container ship known as 'American Oklahoma'. They proceeded under s 3(1)(c) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 1985 Ed) and relied on a first preferred ship mortgage executed on 7 May 1985 and recorded in the Port of Registry of New York, USA. The mortgage was executed on the same day after it was delivered in Korea to US Lines. The vessel was not in Singapore at the time the mortgage was created although it did call at the port of Singapore in 1985 and 1986. US Lines became registered in Singapore as a 'foreign company' under the Companies Act (Cap 50, 1985 Ed) ('the Act') on 20 September 1984.

On 24 November 1986, US Lines filed a petition for relief under the Bankruptcy Code of the United States of America. In another Admiralty in Rem Suit No 572 of 1986 filed in the High Court, Fal Bunkering Co Ltd, the third interveners, claimed US$69,500 for bunkers supplied to a sister vessel of the defendants. The vessel was arrested and it was sold pendente lite in August 1987. In the meantime, in April 1987, the third interveners obtained leave to intervene in these proceedings as persons interested in the res of the action. Unless the third interveners could invalidate the first preferred ship mortgage of the plaintiffs on the vessel, they would not recover anything. The plaintiffs filed and served the statement of claim and as no defence was filed by US Lines, the plaintiffs filed a notice of motion for judgment in default of defence. By the motion the

plaintiffs prayed for a declaration of the validity of the first preferred ship mortgage and the sums claimed in the statement of claim amounting to US$157,351,521. The third interveners opposed the motion. The third interveners contended that under s 131(1) of the Act upon the failure of the plaintiffs to register the mortgage as a charge 'the charge shall, so far as any security on (US Lines') property or undertaking (was) thereby conferred, be void against the liquidator and any creditor of (US Lines)'. In making this contention, the third interveners referred to s 141 of the Act which is also found in the same Division as s 131(1) of the Act.

Held, allowing an order in terms of the motion:

On the facts of the case, the first preferred ship mortgage having been created on 7 May 1985 at a time when the vessel was in the Republic of Korea, some two and a half months before it called at Singapore, there was a charge on 'property outside Singapore' within the meaning of s 141 of the Act and there was no duty at any time thereafter to register the mortgage under s 131 and the vessel's presence in Singapore was irrelevant in this regard.

Cases referred to

1 *Luckins* v *Highway Motel (Carnarvon) Pty Ltd* (1976) 50 ALJR 309 (refd).
2 *Paul & Frank Ltd* v *Discount Bank (Overseas) Ltd* [1967] 1 Ch 348 (refd)
3 *Re Oriel Ltd* [1986] 1 WLR 180 (refd)
4 *NV Slavenburg's Bank* v *Intercontinental Natural Resources Ltd* [1980] 1 WLR 1076 (refd)

Legislation referred to

Companies Act (Cap 50, 1985 Ed) ss 131(1), (2), (3), (4), 132(1), 138, 141
High Court (Admiralty Jurisdiction) Act (Cap 123, 1985 Ed) s 3(1)(c)
Rules of the Supreme Court 1970 O 70 r 20(4)
Companies Act 1961-1973 [Western Australia] s 110
Bankruptcy Code [USA] Cap 11

Anthony Colman QC and *K Parasuram* for the plaintiffs.
Ian Ng for the defendants.
Jeff Leong for the first interveners.
V Ramayah for the second interveners.
Lawrence Boo for the third interveners.
Jude P Benny for the fourth, fifth and sixth interveners.
A Iyer (Ms) for the US government.

Cur Adv Vult

Lai Kew Chai J: By this admiralty in rem writ issued on 22 January 1987, the plaintiffs claimed the sum of US$154,156,319 and US$16,474 being loans and advances made to or on account of the United States Lines Inc ('US Lines'), the owners of the 4258 TEU container ship known as 'American Oklahoma'. They proceeded under s 3(1)(c) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 1985 Ed) and relied on a first preferred ship mortgage executed on 7 May 1985 and recorded in the Port of Registry of New York, USA. The mortgage was executed on the same day after it was delivered in Korea to US Lines. The vessel was not in Singapore at the time the mortgage was created although it was common ground that it did call at the port of Singapore twice in July and October 1985 and more or less at quarterly intervals in 1986.

In another Admiralty in Rem Suit No 572 of 1986 filed in the High Court, Fal Bunkering Co Ltd, the third interveners, claimed US$69,500 for bunkers supplied to a sister vessel of the defendants. The vessel was arrested and it was sold pendente lite in August 1987. In the meantime, in April 1987, the third interveners obtained leave to intervene in these proceedings as persons interested in the res of the action. Unless the third interveners could invalidate the first preferred ship mortgage of the plaintiffs on the vessel, they would not recover anything.

The plaintiffs filed and served the statement of claim on 9 March 1987 and as no defence was filed by US Lines, the plaintiffs filed a notice of motion for judgment in default of defence under O 70 r 20(4) of the Rules of the Supreme Court 1970. By the motion the plaintiffs prayed for a declaration of the validity of the first preferred ship mortgage and the sums claimed in the statement of claim amounting in the aggregate to sum of US$157,351,521. The third interveners opposed the motion. I made an order in terms of the motion. I now give my reasons.

The background may be summarized as follows. According to the affidavit filed on 13 May 1987 of Ferdinand Andrew Zagar Jr, Vice-President of the plaintiffs, the plaintiffs were trustees-mortgagees under six first preferred ship mortgages given by US Lines on six of their US flag econship container vessels which had been employed in the world-liner service of US Lines. By a standby letter of credit facility agreement dated 12 April 1983, as amended ('the facility agreement'), entered into amongst US Lines, the plaintiffs, Citibank NA, Chemical Bank, Bankers Trust Company, Continental Illinois National Bank and Trust Company of Chicago, Marine Midland Bank NA and Security Pacific National Bank (which banks are hereafter collectively referred to as 'the banks') and the plaintiffs, as agent for the banks, the banks extended banking facilities to US Lines upon, inter alia, the said first preferred ship mortgage upon the vessel which together with eleven other vessels of the same type, were built by Daewoo Shipbuilding and Heavy Machinery Ltd and Daewoo Corporation of the Republic of Korea and delivered to US Lines. It was not disputed that events of default, as defined in the security documents, had occurred on several occasions and that the amounts claimed by the plaintiffs were due and payable by US Lines.

It was also not disputed that US Lines became registered in Singapore as a 'foreign company' under Division 2 of Part XI of the Companies Act (Cap 50, 1985 Ed) ('the Act') on 20 September 1984 and that US Lines had

filed a petition for relief under Cap 11 of the Bankruptcy Code of the United States of America on 24 November 1986.

Against the foregoing background the third interveners first asserted that whilst they did not contest the plaintiffs' rights under the mortgage as against US Lines, they contended that under s 131(1) of the Act the failure of the plaintiffs to register the mortgage as a charge 'the charge shall, so far as any security on (US Lines') property or undertaking (was) thereby conferred, be void against the liquidator and any creditor of (US Lines)'. In making this contention, the third interveners referred to s 141 of the Act which is also found in the same Division as s 131(1) of the Act.

It is now appropriate to reproduce the provisions in the Act which are all contained in Division 8 of Part IV of the Act and which are relevant for present purposes.

Section 131(1), (2), (3) and (4) reads as follows:

> (1) Subject to this Division, where a charge to which this section applies is created by a company there shall be lodged with the Registrar for registration, within 30 days after the creation of the charge, a statement of the prescribed particulars and an affidavit verifying the execution of the charge and also verifying the correctness of the statement, and if this section is not complied with in relation to the charge the charge shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company.
>
> ...
>
> (2) Nothing in subsection (1) shall prejudice any contract or obligation for repayment of the money secured by a charge and when a charge becomes void under this section the money secured thereby shall immediately become payable.
>
> (3) The charges to which this section applies are –
> (a) a charge to secure any issue of debentures;
> (b) a charge on uncalled share capital of a company;
> (c) a charge on shares of a subsidiary of a company which are owned by the company;
> (d) a charge or an assignment created or evidenced by an instrument which if executed by an individual, would require registration as a bill of sale;
> (e) a charge on land wherever situate or any interest therein;
> (f) a charge on book debts of the company;
> (g) a floating charge on the undertaking or property of a company;
> (h) a charge on calls made but not paid;
> (i) a charge on a ship or aircraft or any share in a ship or aircraft; and
> (j) a charge on goodwill, on a patent or licence under a patent, on a trade mark, or on a copyright or a licence under a copyright.
>
> (4) Where a charge created in Singapore affects property outside Singapore, the statement of the prescribed particulars accompanied by the verifying affidavit may be lodged for registration under and in accordance with subsection (1) notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situate.

Section 132(1) makes a default to register a charge a criminal offence and it reads:

> Documents and particulars required to be lodged for registration in accordance with section 131 may be lodged for registration by the company concerned or by any person interested in the documents, but if default is made in complying with that section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

Section 141 reads:

> A reference in this Division to a company shall be read as including a reference to a foreign company registered under Division 2 of Part XI, *but nothing in this Division applies to a charge on property outside Singapore of such foreign company.* (emphasis added)

The third interveners relied on *Luckins* v *Highway Motel (Carnarvon) Pty Ltd*,[1] a decision of the High Court of Australia on s 110 of the Companies Act 1961-1973 (Western Australia) which was in pari materia with s 141 of the Act. The chargor, a company incorporated in the State of Victoria, Australia, created a floating charge under a debenture dated 13 August 1973 over its assets and property 'whatsoever and wheresoever both present and future'. At the date of the charge, no bus belonging to the chargor was physically in Western Australia. The charge was not registered in that State. On 9 January 1974, the appellant was appointed as the receiver and manager of the chargor under the debenture. Accordingly, on that day the floating charge had crystallized. On 12 March 1974 a bus which belonged to the chargor which it had aacquired before the issue of the debenture was in Western Australia and was seized and taken in execution pursuant to a writ of fieri facias obtained by the first respondent, a judgment creditor of the chargor in respect of goods supplied. Since the appellants and the first respondent asserted competing claims over the bus, the bailiff interpleaded. The District Court held that the chargor on the facts as found of having carried on business in Western Australia ought to have registered in that State and the failure to register the charge over the bus was void as against a creditor such as the first respondent. In the appeal to the Full Court of Western Australia, the appellant failed in his contention that s 100(1) of the State's Companies Act (equivalent to s 131(1) of the Act) did not require registration of a charge unless at the time of creation of the charge, the property to which it attached was physically within Western Australia. The appellant also failed in his appeal to the High Court of Australia. Gibbs, Stephen, Mason and Jacobs JJ, with Barwick CJ dissenting, decided that the appellant was not entitled to rely upon the exclusionary words in s 110 of the Companies Act of Western Australia to avoid registration of the charge. Gibbs J at p 315 said:

In the case of a floating charge it is not the actual situation of the property but the scope or ambit of the charge that is the material consideration. The question whether a charge answers the description of 'a charge on property outside the State' should be answered by looking at the words 'of the charge'. Where, as in the present case, a floating charge is given over all the property of the company 'whatsoever and wheresoever both present and future' the property over which the charge is given may change its situation and may at one time be within the State and at another outside it, but it will attach to any property that happens to be within the State when the charge crystallizes.

Stephen J at pp 316-7 said:

The question is, however, whether the quality conferred by the actual location of the assets is to be determined once and for all on a particular date, which would no doubt be the date of creation of the charge ..., or whether it is, rather, a continuing affair, the charge losing its relevant quality in ceasing to answer the description applicable to charges excluded by the concluding words of s 110 if at any time after its creation the location of any charged assets is found to be within the State.

In my view, the second of these views, which for convenience I shall refer to as the ambulatory construction, is to be preferred; only then will effect be given to the purpose which Division VII is intended to serve, the protection of those who deal with companies upon the faith of their possession of assets – 'the object of that legislation is that those who are minded to deal with limited companies shall be able, by searching a certain register, to find whether the company has incumbered its property or not.': *Re Jackson & Bassford Ltd* per Buckley J [1906] 2 Ch 467 at p 476.

Mason J at p 318 said:

... the words in s 110 of the Companies Act, 'nothing in this Division applies to a charge on property outside the state of a foreign company' should be understood as referring, not to the situation of the property which is subject to a charge, but to the scope or ambit of the charge, that is to say, to a charge which is expressed as to be confined to property outside the State.

Jacob J at p 319 said:

The words 'property outside the State of a foreign company' refer to property which is at all material times outside the State. They do not refer only to property which is outside the State at the time when the charge is created. A charge is not void under s 100 against the creditor so long as it is a charge on property outside the State, but when it becomes a charge which does not meet this description it will be void unless it is registered.

The dissent of Barwick CJ is found at p 311C-F:

But I do not share my brother's view as to the ambulatory significance which he would give to the exception. In my opinion, the Division in which s 110 is found deals with the creation and registration of charges. It seems to me that it is the time of the giving of the debenture which is relevant to the operation of the Act: indeed, the time for registration is set in relation to that time. I do not think the purpose of the Divison is secured by an ambulatory construction of the section. Obviously a search of the register can afford no information in any case as to the whereabouts then or at any subsequent time of any particular asset of the company such as a bus, a highly mobile piece of property; nor can perusal of the security register really give information as to the particular assets which the charge may have come to cover. It is, in my opinion, an unacceptable view that an asset of the company covered by the debenture and validly charged thereby should become free of the charge by being brought into the State of Western Australia. No machinery is provided by the Companies Act to enable that result to be avoided except the registration of the security at a time when the Companies Act is irrelevant to the validity of the debenture or the effectiveness of the charge it creates. Thus, I am unable to accept that an ambulatory construction is necessary to effect the purpooses of the statute.

The rationale for the majority interpretation of s 110 was set out by Gibbs J at p 315 and Stephen J at p 317 as follows:

The Division recognizes the need for disclosure, upon a register available to the public, of any charges upon a company's assets the possession of which would otherwise suggest their availability to meet, to their full unencumbered value, the claims of creditors. Such a need is not confined to locally incorporated companies. It extends also to foreign companies which carry on business in the State, hence the opening words of s 110, but only if local assets, which being within the State give to such a company its appearance of creditworthiness there, are subject to a charge, out-of-State assets give no such local appearance and if creditors, in their dealing with foreign companies, choose to rely upon the existence of assets elsewhere they must look to foreign registers for the disclosure of encumbrances,,, hence the concluding words of s 110.

A contrary view would distort the operation of the Division; in the case of a floating charge, the Division would then afford no protection in the perhaps not so common situation of credit dealing being had in State A with a foreign company which, having originally only assets in State B, at that time charged its assets wherever situate, and has thereafter extended its business into State A and acquired assets there. Floating charges are by no means uncommon, whether to secure bank overdraft accommodation or for other purposes, and were s 100 to be given other than an ambulatory interpretation it would constitute a trap rather than a safeguard; a search within State A of the register of such a registered foreign company would disclose no charges although in fact all its assets in State A were subject to a floating charge. Nor would the penalty provisions of s 102(1)(b) or (c), affecting the assets of foreign companies before they become registered as such, operate to encourage the occurrence of such a situation; to the circumstances postulated above para (c) clearly has no application, nor, I think, has para (b). This position would not be confined to floating charges but would apply equally to a particular fixed charge on a movable asset which later enters the State after the mortgagor company has begun to carry on business there.

Mr Lawrence Boo for the third interveners observed that the passage in Barwick CJ's dissent did not sufficiently distinguish between the question of validity of the charges in the State of Victoria and its enforceability in the State of Western Australia. He said this was evident in the Chief Justice's remarks that the asset did not become 'free of charge' when brought into Western Aus-

tralia: the point being that the charge was always there but it was void against the creditors of the chargor. He stressed the rationale for registration of charges by companies, as pointed out by the High Court of Australia.

Mr Colman for the plaintiffs in reply began by saying that there were two questions to be resolved, namely, (1) whether the charge as an instrument or contract fell within any of the descriptions in s 131(3) of the Act as to require registration under s 131(1); and (2) if it did, and the company was a foreign company, then was the charge one 'on property outside Singapore' within the exclusionary expression in s 141 of the Act?

In considering the answer to the first question, one had to be able to tell at the time of *creation* whether the charge had the characteristics which would bring it within ss 131 and 141 of the Act. He stressed that (a) the charge had to be registered within 30 days of 'creation'; and (b) from ss 131(1), (3)(d), (4) and 138 of the Act the creation of the charge meant the entering into of contracts by which the security interest was effectuated. Mr Colman went on to say that because failure to register was by s 132(1) a criminal offence and because the time period for registration was within 30 days after 'creation' of the charge, one must in principle only look at the characteristics of a charge when it was created to determine whether it required registration. He drew the court's attention to *Paul & Frank* v *Discount Bank (Overseas) Ltd*[2] per Pennycuick J at pp 362-3 and *Re Oriel Ltd*,[3] at p 183D-H per Oliver LJ (as he then was).

Having approached the matter in principle, Mr Colman then referred to the judgment of Stephen J and submitted that (a) it was wrong in suggesting that a charge previously executed by a foreign company only became 'created' for the purposes of s 131 at the time when the property in question was brought within jurisdiction and that the 30-day period only ran from the day on which the property was brought within jurisdiction; (b) this 'ambulatory' construction was different from all other members of the court; and that his judgment as that in *NV Slavenburg's Bank* v *Intercontinental Natural Resources*[4] which was also relied upon by the third interveners, should be understood as confined to floating charges. Jacob J was of the view that a previously charged property when brought into the jurisdiction should be registered by applying for an extension of time. Mr Colman commented that Jacob J's reasoning was that there would have been no breach if the property was originally outside the jurisdiction and that time would not have to be 'extended' because it would never have run out. Again, Jacob J was alone in holding this view. Mr Colman relied on the dissenting judgment of –Barwick CJ and observed that in a sense Gibbs and Mason JJ supported the plaintiffs' contention.

In my judgment, on the facts of the case before me, the first preferred ship mortgage having been created on 7 May 1985 at a time when the vessel was in the Republic of Korea, some two and a half months before it called at Singapore, there was a charge on 'property outside Singapore' within s 141 and that there was no duty at any time thereafter to register the mortgage under s 131 and the vessel's presence in Singapore was irrelevant in this regard.

For these reasons, I made the orders I did.

Order accordingly.

Solicitors: *Param & Partners*; *Prakash Gurbani & Chong*; *Koh & Yang*; *Wee Ramayah & Partners*; *Haridass Ho & Partners*; *Jude P Benny & Co*; *Drew & Napier*.

Reported by *Wong Kim Fatt*

JB Jeyaretnam v Attorney General of Singapore

HIGH COURT (SINGAPORE) – SUMMONS-IN-CHAMBERS NO 3268/87 (DC SUIT NO 1451 OF 1987)
CHUA J
3 SEPTEMBER 1987

Administrative Law – Natural justice – Complaint of contempt of Parliament – Written explanation given – Whether oral hearing required to be given

Parliament – Contempt – Powers of Parliament to punish for contempt – Whether findings of contempt reviewable by court – Whether question of life or personal liberty involved – Constitution of Singapore, arts 4, 9(1) & 63 – Parliament (Privileges, Immunities & Powers) Act (Cap 217, 1985 Ed), ss 3(1) & (2), 5 & 20

Constitutional Law – Powers of Parliament to punish for contempt – Whether findings of contempt reviewable by court – Whether question of life or personal liberty involved – Constitution of Singapore, arts 4, 9(1) & 63 – Parliament (Privileges, Immunities & Powers) Act (Cap 217, 1985 Ed), ss 3(1) & (2), 5 & 20

Parliament had resolved that the appellant was guilty of contempt of the Committee of Privileges and of Parliament by his publication of five offending newsletters relating to certain proceedings of the committee. He was fined $5,000 for each of the offending newsletters. The Attorney General sued the appellant on behalf of the government of Singapore for the total sum of $25,000 and obtained summary judgment by an order of the Registrar of the Subordinate Courts. The appellant appealed to the High Court. His defences were: (a) that the finding by the Committee of Privileges and of Parliament, that the publication of the five offending newsletters by the appellant amounted to contempt of the committee or of Parliament, was wrong in law; (b) that Parliament acted in excess of its jurisdiction in imposing the fines for contempt; and (c) that the Committee of Privileges and Parliament had failed to observe the rules of natural justice.